

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: December 28, 2023

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TYRONE THURMOND,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.

23-CV-11197 (KMW)

20-CR-0504-2 (KMW)

ORDER DENYING MOTION UNDER  
28 U.S.C. § 2255

KIMBA M. WOOD, United States District Judge:

Movant Tyrone Thurmond asks this Court to vacate his conviction and sentence entered in *United States v. Mitchell (Thurmond)*, No. 20-CR-0504-2 (S.D.N.Y. Dec. 14, 2023).

Thurmond filed this Section 2255 motion on December 17, 2023. Five days later, on December 22, 2023, Thurmond filed a notice of appeal. *See* ECF 1:20-CR-0504, 116. On December 26, 2023, the Clerk of Court transmitted the notice of appeal and the record to the United States Court of Appeals for the Second Circuit.

Because Thurmond's direct appeal is pending, the Court denies the present Section 2255 motion without prejudice as premature. The Court recognizes that it is not, strictly speaking, prohibited from adjudicating this motion while Thurmond's direct appeal is pending. *See United States v. Outen*, 286 F.3d 622, 632 (2d Cir. 2002). But it is in the interest of judicial economy "to avoid confusion or waste of time resulting from having the same issues before two courts at the same time." *United States v. Rodgers*, 101 F.3d 247, 251 (2d Cir. 1996) (internal quotation marks and citation omitted). The same judicial economy concerns animate the Court's aversion to expending its already scarce resources to reach a decision that could be rendered a "nullity" by the results of Thurmond's direct appeal. *Outen*, 286 F.3d at 632.

Because Thurmond's direct appeal is pending, his present Section 2255 motion is premature. The Court therefore denies the Section 2255 motion without prejudice.

### CONCLUSION

The Court denies the motion under 28 U.S.C. § 2255 without prejudice as premature.

Because the present motion makes no substantial showing of a denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 28, 2023  
New York, New York

/s/ Kimba M. Wood  
KIMBA M. WOOD  
United States District Judge